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Case Commentary

Kesavananda Bharati Sripadagalvaru and Others v. State of Kerala

Priyanshi Varshney

Petitioners: His Holiness Kesavananda Bharati Sripadagalvaru & Others

Respondent: State of Kerala & Another

Date of Judgment: 24 April 1973

Bench: 13-Judge Constitutional Bench – Chief Justice S.M. Sikri, Justices J.M. Shelat, A.N. Grover, K.S. Hegde, A.K. Mukherjea, P.J. Reddy, H.R. Khanna, A.N. Ray, K.K. Mathew, M.H. Beg, S.N. Dwivedi, A.K. Palekar, and Y.V. Chandrachud (dissenting)

Citation: (1973) 4 SCC 225; AIR 1973 SC 1461

Introduction

The judgment in *Kesavananda Bharati Sripadagalvaru and Others v. State of Kerala*, Truth be told, with its judgment dated April 24, 1973, is a landmark in Indian constitutional jurisprudence. Heard by an unprecedentedly large bench of 13 judges, this case saw the introduction of the Basic Structure Doctrine—a judicial innovation that restricts the Parliament's power of constitutional amendment under Article 368. Its purpose is to ensure that the fundamental features of the Constitution remain intact—the democratic framework is preserved from being eroded by a fascist legislature. The commentary deals with the facts of the case, relevant legal issues, arguments, judgment, and everlasting significance of the case in highlighting this basic institutional framework in India.

Factual Context

The litigation originated from a writ petition filed under Article 32 of the Constitution by His Holiness Kesavananda Bharati, head of the Edneer Mutt in Kerala, challenging the

constitutional validity of the **Kerala Land Reforms (Amendment) Act, 1969**. This legislation-imposed restrictions on the Mutt's management of religious property, prompting a challenge to its legality. However, the case moved beyond its original emphasis on property rights and evolved into a more profound constitutional inquiry.

The legal backdrop was set up by the Supreme Court's decision that Parliament does not have the power to amend fundamental rights in Part III of the Constitution, as laid down in the case of *I.C. Golaknath v. State of Punjab* (1967)¹. In response, Parliament passed the 24th, 25th, and 29th Amendments to the Constitution. The 24th Amendment laid down the power of Parliament to amend any provision of the Constitution, including Fundamental Rights. Article 24 put an end to Parliament's power to amend any provision of the Constitution, even Fundamental Rights. The 25th Amendment created Article 31C which places certain Directive Principles of State Policy above Fundamental Rights whereas, through the 29th Amendment, the Kerala Land Reforms Act was brought under Part IX, thereby imposing some restrictions upon its judicial review.

Legal Issues

The case presented the following critical issues for adjudication:

1. Does Article 368 confer unrestricted power on Parliament to amend any provision of the Constitution, including its fundamental features?
2. Are the 24th and 25th Constitutional Amendments constitutionally valid?
3. Is the inclusion of the Kerala Land Reforms Act in the Ninth Schedule under the 29th Amendment constitutionally permissible?
4. Can constitutional amendments abridge or abrogate fundamental rights under Part III?
5. Does unfettered parliamentary amending power threaten the democratic and republican character of the Constitution?

These issues required the Court to delineate the boundaries of parliamentary authority while preserving the Constitution's integrity.

Arguments of the Parties

¹ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643

Petitioners' Submissions

Represented by Senior Advocate N.A. Palkhivala, it was submitted on behalf of the petitioners that the Parliament's Power of Amendment under Article 368 is not absolute and unlimited. They urged that the word "amend" means changes which do not destroy the essential character of the Constitution.

The appellants contested the legislations of the 24th and 25th Amendments on the ground that this impeded judicial review, an essential part of constitutional governance, and gave limitless power to Parliament to nullify fundamental rights. They said that the petitioners submitted that the Constitution rests upon certain basic fundamental tenets, such as democracy, secularism, the rule of law, judicial independence, and supremacy of the Constitution. They said these principles are the basic structure of the Constitution and are not amendable. They further raised contentions that constitutional amendments come within the ambit of the term law as defined in Article 13 and would thus become subject to judicial review if found violative of fundamental rights.²

Respondents' Submissions

The State of Kerala, through the Attorney General and Senior Counsel, stated that the amending power of the Parliament under Article 368 is plenary and untrammelled. It was submitted that, as representing the people's sovereignty, Parliament can amend any part of the Constitution including fundamental rights and the Preamble. The 24th Amendment was described as an enabling amendment designed to clarify Parliament's position, which had been obscured by the decision in Golaknath. In addition, the 25th Amendment was justified as privileging Directive Principles-the particular socio-economic reforms, e.g., land redistribution-against fundamental rights.³

According to the Respondents, constitutional amendments are fundamentally different from "laws" as contemplated by Article 13, and as such cannot be frontally challenged on the issue of violation of fundamental rights. In their view, the will of the people-communicated through their elected representatives-should prevail, thereby leaving some scope for flexibility in amending the Constitution to meet the demands of a changing society.⁴

² H.M. Seervai, *Constitutional Law of India*, Vol. III, 1550–1570 (4th ed. 2013)

³ M.P. Jain, *Indian Constitutional Law* 1330–1340 (8th ed. 2021).

⁴ V.N. Shukla, *Constitution of India* 880–900 (13th ed. 2020)

Judgment

By a narrow margin of 7-6, the Supreme Court held that Parliament knows no limits to its power to amend under Article 368, the power is subject, however, to some limitations. Towards this end, the majority propounded what came to be called the doctrine of Basic Structure, namely, that Parliament cannot alter or destroy the basic structure of the Constitution. Justice Khanna, in a concurring opinion, was instrumental in explaining and emphasizing that while fundamental rights may be amended, such an amendment shall in no way be allowed to shake the foundation of the Constitution itself.⁵

The Court identified the following elements as part of the basic structure:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the state
- Separation of powers
- Independence of the judiciary
- Rule of law
- Judicial review

The validity of the 24th Amendment, affirming Parliament's power to amend fundamental rights, while now curtailed by the Basic Structure Doctrine, was upheld. Certain provisions of the 25th Amendment, especially those eliminating judicial review, were deemed void. The 29th Amendment to include Kerala Land Reforms Act in the Ninth Schedule was upheld, subject to the test as per the basic structure. This judgment thus struck a balance between the sovereignty of Parliament and judiciary's role as the protector of the Constitution's fundamental precepts.

Significance and Analysis

The Kesavananda Bharati ruling is a landmark judgment in Indian constitutional law, as it evolved the Basic Structure Doctrine to protect against arbitrary amendments. Laying down a majority judgment, the Bench put an end to the raging tussle between the parliamentary sovereignty and constitutional supremacy. The doctrine entails that certain facets of the

⁵ H.R. Khanna, J., concurring opinion in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, paras 1520–1535

Constitution are considered basic and essential so that they remain unamended to keep the democratic set-up in India out of any legislative interference.

Later cases like *Indira Nehru Gandhi v. Raj Narain* (1975) and *Minerva Mills v. Union of India* (1980)⁶ give continued life to the edifice erected by the Kesavananda views with effluence of doctrine. The doctrine has permeated outside Indian shores and influences the constitutional jurisprudence in countries like Pakistan and Bangladesh.[8] The case exhibits the judiciary quantifying the constitutional values and ensuring that no governmental authority-legislature, executive, or judiciary-has its power unchecked.

The decision also represents an advanced amalgamation of textual, structural, and purposive constitutional interpretation. By laying down what came to be known as the Basic Structure Doctrine, the Court set up a framework within which legislative intent could find some room for manoeuvring, while the most important principles of the Constitution are preserved. This has given the Constitution some degree of architectural stability as it has faced complex socio-political realities in India.

Conclusion

The Kesavananda Bharati This case still stands as a characteristic argument in favor of an iota of constitutionalism in India. From this judgment emanated the constitution of the principle that the legislature cannot amend the Constitution in such a manner as to destroy the very basis of its democratic, secular, and republican character.⁷ By drawing the boundaries of parliamentary power, this case reinforced the judiciary's role as the guardian of constitutional sanctity. It lives through the present day as an element of India's constitutional law, imbuing the conviction that the Constitution's basic attributes rise above temporary political majorities.

⁶ *Minerva Mills v. Union of India*, AIR 1980 SC 1789

⁷ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 250–260 (2nd ed. 2003).